IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 14.02.2002

CORAM:

THE HONOURABLE MR.JUSTICE F.M.IBRAHIM KALIFULLA

AND

THE HONOURABLE MR.JUSTICE R.JAYASIMHA BABU

WRIT PETITION NO.12199 OF 1999 AND W.M.P.NO.17397 OF 1999

V.Vadivelu ..Petitioner

Versus

1. The Deputy Registrar,
Central Administrative Tribunal
Madras Bench,
Chennai-104.

2. The Union of India,
rep. by Chief Post Master General,
Tamil Nadu Circle,
Chennai-600 002.

3. The Superintendent of Post Offices,
Arakkonam Division,
Arakkonam-631 001,
Vellore District. ..Respondents

For Petitioners ::Mr.P.Krishnan

For Respondents ::Mr.N.R.Natarajan for R2 & R3

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus for the relief as stated therein.

: ORDER

(Order of this Court was delivered by

F.M.IBRAHIM KALIFULLA, J.)

The petitioner is aggrieved against the order of the first respondent Tribunal dated 22-3-1999, in so far as, its failure to grant the relief of commutation of provisional pension, interest at the rate of 1 2% p.a. for such commuted pension and also gratuity payable to him from 27-2-1997.

2. The brief facts are that the petitioner who joined as Class IV employee in the Postal Department on 20-10-1966 was subsequently promoted and at the time of his compulsory retirement on 27-2-1997, he was working as Sub Post Master. For certain misfeasance committed by the petitioner in handling the cash of the Nemili Sub Office, in which the petitioner was working, during March, 1996 and August 1996, he was issued with a charge memo, subsequent to which, an enquiry was held against him, in which, the petitioner is stated to have admitted his guilt. Based on the findings of the Inquiry Officer, the petitioner was imposed with a punishment of compulsory retirement by order dated 27-2-1997 which came into effect on that date itself. The petitioner was sanctioned only a provisional pension of Rs.743/- per month initially and by virtue of the implementation of V Pay Commission, the pension got enhanced to Rs.2264/-. When the other terminal benefits of the petitioner were not settled, the petitioner approached the first respondent Tribunal by way of present O.A. in O.A.No.248 of 1998.

3. The said claim of the petitioner was resisted by the respondents on the ground that by virtue of Rule 69(c) of CCS (Pension) Rules 19 72, the gratuity payable to the petitioner could not be made and further by virtue of of Rule 69(c) of CCS (Pension) Rules 1972, as well as, Rule 4 of CCS(Commutation of Pension) Rules 1981, the DCRG and commutation of provisional pension could not be allowed to the applicant till the conclusion of Judicial proceedings pending against the applicant. It transpires that based on a complaint preferred against the petitioner with the Sub Inspector of Police, Namali on 5-3-1997 in Cr.No.58/97 under Sections 403, 409 and 477(A) of IPC, a Calendar Case in C.C.No.30 of 1998 has been laid before the Judicial Magistrate Court II, Arakkonam on 27-11-1997 which was stated to be pending. The first respondent Tribunal, on consideration of Rule 69(c) of CCS (Pension) Rules, as well as, Rule 51(A), however, held that the DCRG payable to the petitioner cannot be withheld. By the order impugned in this Writ Petition, the respondents 2 and 3 were directed to pay the gratuity to the applicant within two months from the date of receipt of copy of the order, failing which, to pay interest at the rate of 12% p.a. for the period of non-payment. The first respondent Tribunal has not adverted to the question relating to the commutation of pension claimed by the petitioner in the O.A.

4. As the respondents 2 and 3 have not challenged the order of the first respondent Tribunal in so far as it related to the payment of DCRG to the petitioner, the question that remains for consideration is, as to whether the petitioner is entitled for interest from the date the gratuity became payable and as to whether he can seek for commutation of pension as claimed by him.

5. As regards the interest part of it, we are of the view that when once the first respondent Tribunal has held that the petitioner was entitled for payment of gratuity irrespective of the stand of the respondents 2 and 3 that during the pendency of the criminal case against the petitioner, DCRG cannot be settled, it will have to be held that the gratuity so payable to the

petitioner would take effect from the date of compulsory retirement, namely, 27-2-1997. When once the respondents 2 and 3 have chosen to accept the order of the first respondent Tribunal, in so far as, it directed the payment of gratuity payable to the petitioner, the non-settlement of gratuity amount on the date it fell due, would definitely attract payment of interest, inasmuch as, the petitioner cannot be put into monetary loss for no fault of him. Therefore we direct that the respondents 2 and 3 should pay interest at the rate of 12% p.a. on the gratuity payable to the petitioner from 27-2-1997 till the date when said amount was paid to the petitioner.

6. As regards the commutation of pension, the learned counsel appearing for the respondents 2 and 3 brought to our notice the provision, namely, Rule 4 of CCS (Commutation of Pension) Rules 1981 which reads as under:

"4.Restriction on commutation of pension:
No Government servant against whom departmental or judicial proceedings as referred to in Rule 9 of the Pension Rules, have been instituted before the date of his retirement, or the pensioner against whom such proceedings are instituted after the date of his retirement, shall be eligible to commute a fraction of his provisional pension authorized under Rule 69 of the Pension Rules or the pension, as the case may be, during the pendency of such proceedings."

7. However, inequitable the rule may be, in respect of cases where a person against whom such departmental or judicial proceedings as contemplated under Rule 9 of the Pension Rules, have been instituted, and more so, in a case where like that of the petitioner against whom, the criminal proceedings came to be instituted just five days after his date of retirement, making it ineligible for the concerned pensioner to seek for commutation of even the provisional pension, having regard to the existence of the said rule, it will have to be held that respondents 2 and 3 cannot be directed to bypass the said rule and permit the petitioner to seek for commutation of pension as claimed by him. We are therefore unable to grant any relief to the petitioner, in so far as, it related to his prayer for commutation of provisional pension. To that extent, we decline to grant any relief. The Writ Petition is therefore ordered to the limited extent of direction for payment of interest on the gratuity payable to the petitioner. In other respects, the Writ Petition stands dismissed. No costs. Consequently, W.M.P. is closed.

(R.J.B.J.,)(F.M.I.K.J.,)
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R.JAYAIMHA BABU, J.
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PRE DELIVERY ORDER IN
W.P.NO.12199 OF 1999
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